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Revenue Procedure 86-1

(Reprinted from IR Bulletin 1986-1, dated January 6, 1986)

Department of the Treasury
Internal Revenue Service

26 CFR 601.201. Rulings and determination letters.

Rev. Proc. 86-1

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SECTION 1. PURPOSE

The purpose of this revenue procedure is to update Rev. Proc. 85-1, 1985-1 C.B. 440 which provides procedures for issuing rulings, determination letters and information letters, and for entering into closing agreements on specific issues involving the interpretation or application of the federal tax laws. It also tells taxpayers and their representatives where to send requests for rulings, determination letters and information letters. It gives the steps to follow so that requests may be handled more efficiently. Changes to this revenue procedure will be incorporated annually in a new revenue procedure published as the first revenue procedure of the year.

SEC. 2. SCOPE

This revenue procedure applies only to ruling requests, information letters, and closing agreements under the jurisdiction of the Associate Chief Counsel (Technical), and to requests for determination letters under the jurisdiction of field offices that relate to Code sections under the jurisdiction of the Associate Chief Counsel (Technical). The Chief Counsel through the Associate Chief Counsel (Technical) provides basic principles and rules for the uniform interpretation and application of the federal tax laws under the jurisdiction of the Associate Chief Counsel (Technical). The procedures for obtaining rulings, etc., that apply specifically to federal firearms, alcohol and tobacco taxes under subtitle E of the Internal Revenue Code are under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms. The procedures for obtaining rulings, determination letters, etc., on employee plans and exempt organizations are under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations). See Rev. Proc. 83-36, 1983-1 C.B. 763. However, the jurisdiction of the Associate Chief Counsel (Technical) includes section 521 of the Code, on exemption of farmer's cooperatives from tax; section 526, on shipowners' protection and indemnity associations; section 527(a), (b), (c), (d), (e), and (g), on political organizations, and section 528, on certain homeowners' associations.

SEC. 3. CHANGES

.01 A table of contents has been added to the beginning of this revenue procedure to assist taxpayers and Service personnel.

.02 Section 5.01 has been amended to indicate the specific sections of this revenue procedure (Rev. Proc. 86-1) that are applicable to requests for accounting period changes.

.03 Section 9.02 has been amended to require a penalties of perjury statement with any change in a ruling request.

.04 Section 9.05 has been amended to require that telephone numbers also be a part of the factual information submitted with each request for a ruling or a determination letter. Also, the list of revenue procedures that provide specific guidelines for requesting rulings has been revised by updating the list.

.05 Section 16.01 has been amended, as previously announced in Rev. Proc. 85-50, 1985-40 I.R.B. 26, to allow personnel in the rulings divisions to discuss orally substantive tax issues with taxpayers or their representatives on a time-available basis.

SEC. 4. GENERAL PRACTICE AND DEFINITIONS

.01 The Service answers inquiries of individuals and organizations, when appropriate in the interest of sound tax administration, about their status for tax purposes and the tax effects of their acts or transactions. The National Office issues rulings in such matters.

.02 District Directors of Internal Revenue apply the statutes and tax treaties, regulations, revenue rulings, and other precedents published in the Internal Revenue Bulletin in determining tax liability, collecting taxes, and issuing information letters and determination letters in answer to taxpayers' inquiries or requests. For purposes of this revenue procedure, any reference to District Director or district office includes their respective offices or, when appropriate, the director of an Internal Revenue Service Center.

.03 The word "taxpayer" includes all persons subject to any provision of the Internal Revenue Code and, when appropriate, their representatives and issuers of section 103 obligations. Any reference to National Office means only the Office of the Associate Chief Counsel (Technical).

.04 A "ruling" is a written statement

issued to a taxpayer by the National Office that interprets and applies the tax laws to that taxpayer's specific set of facts. Rulings are issued only by the National Office, under the general supervision of the Associate Chief Counsel (Technical). Issuing rulings has been largely delegated to the Directors of the Corporation Tax Division and the Individual Tax Division.

.05 A "determination letter" is a written statement issued by a District Director in response to a written inquiry by a taxpayer that applies the principles and precedents previously announced by the National Office to a specific set of facts. A determination letter is issued only when a determination can be made on the basis of clearly established rules in the statute or regulations, or by a position in a ruling, opinion, or court decision published in the Internal Revenue Bulletin that specifically answers the question presented. A determination letter will not be issued if a determination cannot be made, for example, when the question presents a novel issue, or if the matter is excluded from the jurisdiction of a District Director under section 7 of this revenue procedure.

.06 An "information letter" is a statement issued either by the National Office or by a District Director that calls attention to a well-established interpretation or principle of tax law, without applying it to a specific set of facts. It may be issued if the request indicates that the taxpayer is seeking general information. If the request does not meet the requirements of section 9 of this revenue procedure, but the Service thinks that the general information may help the individual or organization, it may issue an information letter.

.07 A "revenue ruling" is an interpretation by the Service that has been published in the Internal Revenue Bulletin. It is the conclusion of the Service on how the law is applied to an entire set of facts. Revenue rulings are issued only by the National Office and are published for the information and guidance of taxpayers, Internal Revenue Service officials, and other interested parties.

.08 A "closing agreement" is an agreement between the Commissioner of Internal Revenue or the Commissioner's delegate and a taxpayer on a specific issue or issues or liability that is entered into under the authority in section 7121 of the Code. A closing agreement prepared in an office under the responsibility of the Associate Chief Counsel (Technical) is based on a ruling that has been signed by the Commissioner, or the Commissioner's delegate, that says that a closing agreement will be entered into on the basis of the holding of the ruling letter. Closing agreements are final, unless fraud, malfeasance, or misrepresentation of a material fact can be shown. Closing agreements may be entered into when it is advantageous to have the matter permanently and conclusively closed, or when a taxpayer can show good and sufficient reasons for an agreement and the government will sustain no disadvantage by its consummation. In appropriate cases, taxpayers may be asked to enter into a closing agreement as a condition to the issuing of a ruling. If, in a single case, closing agreements are requested for each of a number of taxpayers, such agreements are entered into only if the number of taxpayers is 25 or less. However, if the issue and holding are identical for all taxpayers and they number more than 25, a "mass closing agreement" will be entered into with the taxpayer who is authorized by the others to represent the entire group.

SEC. 5. RULINGS ISSUED BY THE NATIONAL OFFICE

01. *In income and gift tax matters,* the National Office issues rulings on prospective transactions and on completed transactions that occurred before the return is filed for the year in which such transactions are consummated. However, the National Office will issue rulings after the return is filed if a ruling was required by section 367 of the Code (as in effect prior to the amendment made by the Tax Reform Act of 1984) and the ruling request was filed on time under that section. Further, see Rev. Proc. 79-63, 1979-2 C.B. 578, which concerns applications for extensions of the time for making an election or application for relief under section 1.9100-1 of the regulations. If a request for an extension of time under section 1.9100-1 is submitted after the return is filed but before the return is examined, the procedures under Rev. Proc. 86-1 are applicable. If an examination of the return has begun, or is being considered by an Appeals Office, the procedures of Rev. Proc. 86-2, page 19, this Bulletin, are applicable. The National Office issues rulings on the exempt status of organizations under section 521. See Rev. Proc. 84-46, 1984-1 C.B. 541. Specific instructions and guidelines relating to corporate distributions and the determination of the earnings and profits of corporate taxpayers are contained in Rev. Proc. 75-17, 1975-1 C.B. 644. In such matters only the provisions of sections 9.10, 9.11, 9.14 and 11 of this revenue procedure (Rev. Proc. 86-1) are applicable. Specific instructions and guidelines relating to a change in method of accounting for federal income tax purposes are contained in Rev. Proc. 84-74, 1984-2 C.B. 736. In such matters only the provisions of sections 8.02, 9.02, 9.08, 9.10, 9.11, 9.15, 9.17, 9.18 and 9.21, 11, 15, 16 and 17 of this revenue procedure (Rev. Proc. 86-1) are applicable. In matters relating to accounting period changes only the provisions of sections 8.02, 9.02, 9.08, 9.10, 9.11, 9.15, 9.17, 9.18, and 9.21, 11, 15, 16, and 17 of this revenue procedure (Rev. Proc. 86-1) are applicable. The National Office ordinarily does not issue rulings if, at the time the ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period, and (1) that issue is being examined by a District Director or is being considered by an Appeals Office, or (2) that issue has been examined by a District Director or considered by an Appeals Office and the statutory period of limitation on either assessment or for filing a claim for refund or credit of tax has not expired, or a closing agreement covering the issue or liability has not been entered into by a District Director or by an Appeals Office. If a return dealing with an issue for a particular year is filed while a request for ruling on that issue is pending, the National Office will issue the ruling unless it is notified by the taxpayer that an examination of that issue or the identical issue on an earlier year's return has been started by a District Director. See section 9.06. However, even if an examination has begun, the National Office ordinarily will issue the ruling if the District Director agrees, by memorandum, to permit the ruling to be issued. The National Office does not issue rulings on

the replacement of involuntarily converted property, whether or not replacement has been made, if the taxpayer has already filed a return for the tax year in which the property was converted. See section 7.06 of the District Director's authority to issue determination letters in this connection. In addition, the National Office does not issue rulings on the classification of an organization if a return has been filed for the organization for an earlier period.

.02 *In estate tax matters*, the National Office issues rulings with respect to transactions affecting the estate tax of a decedent before the estate tax return is filed. If the estate tax return is due to be filed before the ruling is issued, the taxpayer should secure an extension of time for filing the return for the maximum period of six months, and notify the National Office Branch considering the request for ruling that an extension has been secured. If the return is filed before the ruling is issued, the taxpayer must disclose on the return that a ruling has been requested, attach a copy of the pending ruling request to the return, and notify the National Office that the return has been filed. The National Office will make every effort to issue the ruling within three months of the day on which the return was filed. If the ruling cannot be issued within that three month period, the National Office will notify the District Director having jurisdiction of the return who may, by memorandum to the National Office, grant an additional period for the issuance of the ruling. The National Office will not rule on matters relating to the application of the estate tax to property or the estate of a living person.

1 *In matters involving additional tax under section 2032A(c)*, the National Office issues rulings on prospective transactions and on completed transactions that occurred before the return is filed for the year in which such transactions are consummated.

.03 *In generation-skipping transfer tax matters*, the National Office issues rulings on transactions that affect the generation-skipping transfer tax before the return is filed. Rulings are not issued until after the generation-skipping trust, or trust equivalent, has been established. Rulings are not issued on a generation-skipping transfer tax matter before the distribution or termination takes place. Notwithstanding the foregoing, the National Office will issue rulings regarding the application of the generation skipping transfer tax effective date rules (section 2006(c) of the Tax Reform Act of 1976, Pub. L. 94-455, 1976-3 C.B. (Vol. 1) 1, 365, as amended by section 702(n)(1) of the Revenue Act of 1978, Pub. L. 95-600 1978-3 C.B. (Vol. 1) 1, 169) to wills, trusts, and trust equivalents in existence on June 11, 1976.

.04 *In employment and excise tax matters*, the National Office issues rulings on prospective transactions and on completed transactions either before or after the return is filed for those transactions. In employment tax matters, generally the taxpayer is the employer. However, if the worker asks for the ruling, both the worker and the employer are considered to be the taxpayer and both are entitled to the ruling. The National Office usually will not issue rulings if, at the time the ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period and (1) that issue is under examination by a District Director or under consideration by an Appeals Office, or (2) that issue has been examined by a District Director or considered by an Appeals Office and the statutory period of limitation on either assessment or for filing a claim for refund or credit of tax has not expired, or a closing agreement covering the issue or liability has not been entered into by a District Director or by an Appeals Office. However, if a District Director began an examination of the issue involved in the ruling request, the National Office usually will issue the ruling if the District Director agrees, by memorandum, to permit the ruling to be issued.

.05 *In administrative provisions matters*, the National Office issues rulings on issues arising under the Internal Revenue Code, and related statutes, and the regulations thereunder, that relate primarily to the time, place, manner, and procedures, for reporting and paying taxes; assessing and collecting taxes (including interest and penalties); abating, crediting, or refunding overassessments or overpayments of tax; and filing information returns. Rulings ordinarily are not issued, if, at the time the ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period and (1) that issue is being considered by a District Director or an Appeals Office, or (2) that the issue has been examined by a District Director or considered by an Appeals Office and the statutory period of limitation on either assessment or for filing a claim for refund, or credit of tax has not expired, or a closing agreement covering the issue or liability has not been entered into by a District Director or Appeals Office. If a return involving an issue for a particular year is filed while a request for a ruling on that issue is pending, the National Office will issue the ruling unless an examination of that issue or an examination of the identical issue on an earlier year's return has been started by a District Director. But, even if consideration has begun, the National Office ordinarily will issue the ruling if the District Director agrees, by memorandum, to permit the ruling to be issued.

.06 The National Office does not issue rulings to business, trade, or industrial associations or to similar groups concerning the application of the tax laws to members of the group. It may, however, issue rulings to these groups or associations on their own tax status or liability if the request meets the requirements of this section.

.07 Pending the adoption of regulations (either temporary or final) that interpret the provisions of any act, the issuing of rulings will be considered under the following conditions.

1 If the ruling request presents an issue on which the answer seems clear by applying the statute to the facts, a ruling will be issued under the usual procedures.

2 If the ruling request presents an issue on which the answer seems reasonably certain but not entirely free from doubt, a ruling will be issued only if it is established that a business emergency requires a ruling or that unusual hardship will result from failure to obtain a ruling. If the taxpayer believes that a business emergency exists or that an unusual hardship will result from failure to obtain a ruling, the taxpayer should submit with the request a separate letter stating the facts necessary for the Service to reach a conclusion. In this connection, the Service will not consider a "business emergency" to result from circumstances under the taxpayer's control, such as scheduling within an inordinately short time the

closing date for a transaction or a meeting of the board of directors or the shareholders of a corporation. However, if the ruling request presents an issue that cannot be readily resolved before regulations are issued, a ruling will not be issued.

SEC. 6. DETERMINATIONS UNDER SECTION 999(d) OF THE CODE

Under Rev. Proc. 77-9, 1977-1 C.B. 542, the National Office issues determinations under section 999(d) of the Code that may deny certain benefits of the foreign tax credit, deferral of earnings of foreign subsidiaries and domestic international sales corporations (DISC) to a person, if that person, or a member of a controlled group (within the meaning of section 993(a)(3)) that includes that person, or a foreign corporation of which a member of the controlled group is a United States shareholder, agrees to participate in, or cooperate with, an international boycott.

SEC. 7. DETERMINATION LETTERS ISSUED BY DISTRICT DIRECTOR

.01 *In income and gift tax matters.* District Directors issue determination letters in response to taxpayers' written requests on completed transactions that affect returns over which they have examination jurisdiction. This applies only if the question presented is specifically answered by statute or regulation, or by the position stated in a ruling, opinion or court decision published in the Internal Revenue Bulletin. A determination letter usually is not issued for a question concerning a return to be filed by the taxpayer if the same question is involved in a return already filed. District Directors do not issue determination letters on the tax consequences of prospective or proposed transactions, except as provided in section 7.06.

.02 *In estate tax matters.* District Directors issue determination letters in response to written requests affecting the estate tax returns over which they have examination jurisdiction, but only if the question presented is specifically answered by statute or regulation, or by the position stated in a ruling, opinion, or court decision published in the Internal Revenue Bulletin. District Directors do not issue determination letters on matters concerning the application of the estate tax to property or the estate of a living person.

.03 *In generation-skipping transfer tax matters,* District Directors issue determination letters in response to written requests affecting the generation skipping transfer tax returns over which they have examination jurisdiction, but only if the questions presented are specifically answered by statute or regulation, or by a position stated in a ruling, opinion, or court decision published in the Internal Revenue Bulletin. District Directors do not issue determination letters or matters concerning the application of the generation-skipping transfer tax before the distribution or termination takes place.

.04 *In employment and excise tax matters,* District Directors issue determination letters on completed transactions in response to written requests from taxpayers over which they have examination jurisdiction, but only if the question presented is specifically answered by statute or regulation, or by the position stated in a ruling, opinion, or court decision published in the Internal Revenue Bulletin.

.05 Notwithstanding the provision of section 7.01, 7.02, 7.03 and 7.04, a District Director will not issue a determination letter in response to a request that presents a question specifically answered by statute or regulation, or by the position stated in rulings, etc., published in the Internal Revenue Bulletin, if (1) it appears that the taxpayer has directed a similar inquiry to the National Office, (2) the same issue involving the same taxpayer is pending in a case before an Appeals Office, (3) the determination letter is requested by an industry, trade association, or similar group, or (4) the request involves an industrywide problem. Under no circumstances will a District Director issue a determination letter unless it is clearly shown that the request concerns a return that has been filed or is required to be filed over which the District Director has or will have examination jurisdiction. Notwithstanding the provisions of section 7.04, a District Director will not issue a determination letter on an employment tax question if the specific question for the same taxpayer has been or is being considered by the Central Office of the Social Security Administration or the Railroad Retirement Board. Nor will District Directors issue determination letters for determination of a constructive sales price under section 4216(b) or 4218(e) of the Code. The National Office, however, will issue rulings in this area. See section 8.04.

.06 District Directors issue determination letters on the replacement of involuntarily converted property under section 1033 even though the replacement has not been made, if the taxpayer has filed an income tax return for the year in which the property was involuntarily converted.

.07 A request received by a District Director on a question concerning an income, estate, or gift tax return already filed will be, in general, considered in connection with the examination of the return. If a response is made to such a request before the return is examined, it will be considered a tentative finding in any later examination of that return.

SEC. 8. DISCRETIONARY AUTHORITY TO ISSUE RULINGS AND DETERMINATION LETTERS

.01 The Service ordinarily will not issue rulings or determination letters in certain areas because of the factual nature of the problem involved, or for other reasons. Rev. Proc. 86-3, page 26, this Bulletin, provides a list of these areas. This list is not all inclusive, since the Service may decline to issue a ruling or a determination letter on other grounds, whenever warranted by the facts or circumstances of a particular case. The National Office and District Directors may, when it is considered appropriate and in the best interest of the Service, issue information letters calling attention to well-established principles of tax law.

.02 A ruling or a determination letter is not issued on alternative plans of proposed transactions or on hypothetical situations.

.03 The National Office ordinarily will not issue rulings on only part of an integrated transaction.

.04 The National Office will issue rulings in all cases on the determination of a constructive sales price under section 4216(b) or 4218(c) and in all other cases on prospective or future transactions if the law or regulations requires a determination of the effect of a proposed transaction for tax purposes.

SEC. 9. INSTRUCTIONS TO TAXPAYER

.01 The taxpayer should submit a request for a ruling or a determination letter in duplicate if (1) more than one issue is presented in the request, or (2) a closing agreement is requested on the issue presented. It is not necessary to submit requests in duplicate under other circumstances except as set forth in section 9.09.

.02 A request for a ruling or determination letter and any factual information or change in the ruling request submitted at a later time must be accompanied by a declaration in the following form: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling or determination letter are true, correct, and complete." The declaration may not be made by the taxpayer's representative. It must be signed by the person or persons on whose behalf the request is made. The person who must sign for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts. The officer must be one whose duties are not limited to obtaining a ruling or determination letter from the Service. The person signing for a trust or partnership must be a trustee or partner who has personal knowledge of the facts.

.03 If more than one issue is presented in a request for a ruling, the Service generally will issue a single ruling letter. However, the taxpayer may request a separate ruling letter on any of the issues. Unless the Service determines that it is not feasible or not in the best interest of the Service to comply with such a request, it will issue separate ruling letters.

.04 When multiple issues are involved in a single factual situation and separate letters requesting rulings are submitted, a statement to this effect must be included in each ruling letter request. The Service in issuing each ruling will state that separate rulings have been issued or requests for rulings are pending.

.05 Each request for a ruling or a determination letter must contain a complete statement of all of the facts relating to the transaction. Such facts include: names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties; the location of the District Office that has or will have examination jurisdiction over the return, not the Service Center where the return is filed; a full and precise statement of the business reasons for the transaction, and a carefully detailed description of the transaction. (The term "all interested parties" does not mean that a list is required of all shareholders of a widely-held corporation requesting a ruling relating to a reorganization, or a list of employees where a larger number may be involved.) If the request deals with only one step of a larger integrated transaction, the facts, circumstances, etc. relating to the entire transaction must be submitted. However, see section 8.03 of this revenue procedure (Rev. Proc. 86-1). In addition, true copies of all contracts, wills, deeds, agreements, instruments, and other documents in the transaction must be submitted with the request. Original documents, such as contracts, wills, etc., should not be submitted because they become part of the Service's file and will not be returned. All material facts in documents must be included in the taxpayer's letter requesting a ruling or in supplemental letters, and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the issue or issues, specifying the provisions that apply. If the request concerns a corporate distribution, reorganization, or similar transaction, the corporate balance sheet and profit and loss statement should be submitted. If the request relates to a prospective transaction, the most recent balance sheet and profit and loss statement should be submitted.

Material facts furnished to the Service by telephone or orally at a conference must be promptly confirmed by letter to the Service with a declaration in the form described in section 9.02. This confirmation must be furnished within 21 calendar days to be considered part of the request. An extension of the 21-day period will be granted only if justified in writing by the taxpayer and approved by the Chief or Assistant Chief of the branch to which the case is assigned. A request for extension should be submitted before the end of the 21-day period. If unusual circumstances close to the end of the 21-day period make a written request impractical, within the 21-day period the National Office should be told of the problem and that the written request for extension will be coming soon. Such a request must be sent promptly. The taxpayer or taxpayer's representative will be told promptly and later in writing of the approval or denial of the requested extension. There is no right of appeal to a denial of an extension request. Because the purpose of these procedures is to speed up the ruling process, the taxpayer is encouraged to submit the required relevant material promptly. Therefore, requests for extension should be justified by compelling facts and circumstances. If the Service is not made aware, as provided above, of problems in meeting the 21-day period, or if the request is not sent promptly after the National Office is notified of problems in meeting the 21-day period, the Service will process the case on the assumption that no further submission will be received.

Specific guidelines for requesting rulings under certain Code sections follow: Rev. Proc. 84-48, 1984-1 C.B. 547, as amplified by Rev. Proc. 84-49, 1984-1 C.B. 548, and Rev. Proc. 84-50, 1984-1 C.B. 550, (guidelines for submitting requests for rulings under sections 103 and 7478); Rev. Proc. 80-36, 1980-2 C.B. 769, as amended by Rev. Proc. 83-73, 1983-2 C.B. 593 (certification of manufacturers under section 44C); Rev. Proc. 68-11, 1968-1 C.B. 761 (guidelines for a ruling request under section 117); Rev. Proc. 81-62, 1981-2 C.B. 684 (guidelines concerning a request for a ruling under section 302 or 311); Rev. Proc. 81-68, 1981-2 C.B. 723 (guidelines concerning a request for a ruling under section 332, 334(b)(1) or 334(b)(2)); Rev. Proc. 81-52, 1981-2 C.B. 625 (guidelines concerning a request for a ruling under sections 331 and 337); Rev. Proc. 81-42, 1981-2 C.B. 611 (guidelines concerning a request for a ruling under section 302(b)(4)); Rev. Proc. 83-59, 1983-2 C.B. 575 (guidelines concerning a request for a ruling under section 351); Rev. Proc. 81-41, 1981-2 C.B. 605 (guidelines concerning a request for a ruling under section 355); Rev. Proc. 68-23, 1968-1 C.B. 821, as modified by Rev. Proc. 77-17, 1977-1 C.B. 577, and as amplified by Rev. Proc. 76-20, 1976-1 C.B. 560 and Rev. Proc. 80-14,

1980-1 C.B. 617, Rev. Proc. 69-19, 1969-2 C.B. 301, as amplified by Rev. Proc. 74-36, 1974-2 C.B. 491, Rev. Proc. 77-5, 1977-1 C.B. 536, Rev. Proc. 78-27, 1978-2 C.B. 526, and Rev. Proc. 78-28, 1978-2 C.B. 526 (guidelines concerning a request for a ruling under section 367). However, see section 7.367(b) of the Temporary Income Tax Regulations and section 1.367(a) of the Income Tax Regulations under the Tax Reform Act of 1976, which superseded the previously mentioned revenue procedures relating to section 367, to the extent of overlapping rules; Rev. Proc. 81-70, 1981-2 C.B. 729 (guidelines for estimating the basis of stock acquired in a section 368(a)(1)(B) reorganization); Rev. Proc. 81-60, 1981-2 C.B. 680 (guidelines concerning a request for a ruling under section 368(a)(1)(E)). See, however, Rev. Proc. 86-3, page 26, this Bulletin, which provides that a ruling whether a transaction constitutes a corporate recapitalization within the meaning of section 368(a)(1)(E) will not be issued except when the recapitalization is an integral part of a larger transaction and it is impossible to determine the tax consequences of the larger transaction without making a determination with regard to the recapitalization, Rev. Proc. 77-30, 1977-2 C.B. 539, as clarified by Rev. Proc. 78-18, 1978-2 C.B. 491 and Rev. Proc. 78-23, 1978-2 C.B. 503, and Rev. Proc. 77-37, 1977-2 C.B. 568, as amplified by Rev. Proc. 77-41, 1977-2 C.B. 574 and Rev. Proc. 83-81, 1983-2 C.B. 598 and Rev. Proc. 84-42, 1984-1 C.B. 521 (certain other guidelines concerning requests for rulings handled by the Reorganization Branch of the Corporation Tax Division); Rev. Proc. 71-19, 1971-1 C.B. 698 (guidelines concerning requests for rulings on unfunded deferred compensation); Rev. Proc. 83-25, 1983-1 C.B. 689 (guidelines for requesting changes in accounting period for Subchapter S corporations); Rev. Proc. 72-13, 1972-1 C.B. 735, Rev. Proc. 74-17, 1974-1 C.B. 438, and Rev. Proc. 75-16, 1975-1 C.B. 676 (guidelines on classification of limited partnerships); Rev. Proc. 82-58, 1982-2 C.B. 847 (guidelines on classification of organizations as liquidating trusts); Rev. Proc. 82-36, 1982-1 C.B. 490 (guidelines concerning requests for consent to elect not to defer gain or loss on deferred intercompany transactions); Rev. Proc. 79-63, 1979-2 C.B. 578 (factors considered and information needed for granting extensions under section 1.9100-1 of the Income Tax Regulations.

A ruling request that involves a question of whether a rate order, proposed or issued by a regulatory agency, will meet the normalization requirements of sections 46(f), 167(l), and 168(e)(3) of the Code, ordinarily will not be considered unless the taxpayer states in the request for ruling whether:

(1) the regulatory authority responsible for establishing or approving the taxpayer's rates has reviewed the request and believes that the request is adequate and complete, and

(2) the taxpayer will permit the regulatory authority to participate in any National Office conference concerning the request.

.06 The request must contain a statement of whether, to the best of the knowledge of the taxpayer and the taxpayer's representative(s), if any, the identical issue is in a return of the taxpayer within the meaning of section 267 of the Code, or a member of an affiliated group of which the taxpayer is also a member within the meaning of section 1504) and, if so, whether the issue (1) is being examined by a District Director, (2) has been examined and the statutory period of limitation on either assessment or for filing a claim for refund or credit of tax has not expired or a closing agreement covering the issue or liability has not been entered into by a District Director, (3) is being considered by and Appeals Office in connection with the taxpayer's return for an earlier period, or has been considered by an Appeals Office and the statutory period of limitation on either assessment or for filing a claim for refund or credit of tax has not expired or a closing agreement covering the issue or liability has not been entered into by an Appeals Office, or (4) is pending in litigation in a case involving the taxpayer or a related taxpayer. The request must also contain a statement whether, to the best of the knowledge of the taxpayer and the taxpayer's representative(s), the identical or similar issue has been (i) submitted to the Service, but withdrawn before a ruling was issued, or (ii) ruled on by the Service to the taxpayer or to the taxpayer's predecessor and, if so, when and with what results. If, after the request is filed but before a ruling is issued, the taxpayer knows that an examination of the issue by a District director has been started, the taxpayer must notify the National Office of such action. If a return is filed before a ruling is received from the National Office concerning the issue, a copy of the request must be attached to the return. This alerts the District Office and avoids premature District action on the issue.

.07 As an alternative procedure (known as the "two-part" ruling request procedure) for the issuance of rulings on prospective transactions, the taxpayer may submit a summary of the facts considered to be controlling the issue, in addition to the complete statement required for ruling requests by section 9.05. If the National Office agrees with the summary, the National Office will use it as the basis for the ruling. To use this procedure, the taxpayer should submit the following with the request for a ruling:

1 A complete statement of facts about the transaction, together with related documents, as required by section 9.05; and

2 A summary statement of the facts believed to be controlling in reaching the request conclusion. When the taxpayer's statement of controlling facts is accepted, the Service will base its ruling on these facts and only this statement will ordinarily be incorporated in the ruling letter. It is emphasized, however, that:

(a) The taxpayer may elect this procedure for a "two-part" ruling request. It is not to be considered a required substitute for the regular procedures provided by this revenue procedure;

(b) The taxpayer's rights and responsibilities are the same under the "two-part" ruling request procedure as those provided in this revenue procedure;

(c) The Service reserves the right to rule on the basis of a more complete statement of facts it considers controlling and to seek more information in developing facts and restating them; and

(d) The "two-part" ruling request procedure will not apply if it is inconsistent with other procedures, such as those dealing with request for permis-

sion to change accounting methods or periods; applications for recognition of exempt status under section 521 of the Code; or rulings or employment tax status.

.08 If the taxpayer advocates a particular conclusion, an explanation of the grounds for the assertion must be furnished, together with a statement of relevant authorities in support of the taxpayer's views. Even though the taxpayer is urging no particular tax treatment of a proposed or prospective transaction, the taxpayer's views on the tax results of the proposed action and a statement of relevant authorities to support those views must be furnished. In addition, the taxpayer is encouraged to inform the Service, and discuss the implications of any legislation, tax treaties, court decisions, regulations, revenue rulings or revenue procedures that the taxpayer determines to be contrary to the position advanced. If the taxpayer determines that there are no contrary authorities, a statement to this effect would be helpful in the ruling request. Identification and discussion of contrary, authorities will generally enable Service personnel to arrive more quickly at a full understanding of the issue and the relevant authorities. There is a further advantage to the taxpayer. When Service personnel receive the request, they will have before them the taxpayer's thinking on the effect and applicability of contrary authorities. Such information should, therefore, make research easier and lead to earlier action by the Service. Conversely, failure to disclose and distinguish significant contrary authorities may result in requests for additional memoranda that will delay action on the ruling request.

.09 To assist the Service in making the deletions required by section 6110(c) of the Code from the text of rulings and determination letters, to be made open to public inspection under section 6110(a), a deletions statement must accompany each request. The statement must either state that no information other than names, addresses, and identifying numbers need be deleted or, if more information is proposed to be deleted, the statement must indicate the deletions proposed by the person requesting the ruling or determination letter. If the latter alternative is chosen, the statement must be made in a separate document, and it must be accompanied by a copy of the request for a ruling or determination letter and supporting documents, on which must be shown by the use of brackets, the material that the person making the request believes should be deleted pursuant to section 6110(c). The statement of proposed deletions must indicate the statutory basis, under section 6110(c), for each proposed deletion. The statement of proposed deletions must not appear to be referred to anywhere in the request for a ruling or determination letter. If the person making the request decides to ask for additional deletions before the ruling or determination letter is issued, additional statements may be submitted. The procedures in this paragraph also apply to additional information that is submitted after the initial request.

.10 A request by or for a taxpayer must be signed by the taxpayer or the taxpayer's authorized representative. if the request is signed by a representative, or if the representative is to appear before the Service in connection with the request, the representative must be:

1 an attorney who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia, and who files with the Service a written declaration that he or she is currently qualified as an attorney and is authorized to represent the taxpayer.

2 a certified public accountant who is qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia, and who files with the Service a written declaration that he or she is currently qualified as a certified public accountant and is authorized to represent the taxpayer; or

3 a person, other than an attorney or certified public accountant who is currently enrolled to practice before the Service, and who files with the Service a written declaration that he or she is currently enrolled (including in the declaration either the enrollment number or the expiration date of the enrollment card) and is authorized to represent the taxpayer. (See Treasury Department Circular No. 230 (31 CFR Part 10), 1985-51 I.R.B. 6, for the rules on who may practice before the Service.) These requirements do not apply to an individual representing his or her fulltime employer, or to a bona fide officer, administrator, administratrix, trustee, etc., representing a corporation, trust, estate, association, or organized group. An unenrolled preparer of a return (other than an attorney or certified public accountant referred to in (1) and (2) above) who is not a full-time employee or a bona fide officer, administrator, administratrix, trustee, etc., may not represent a taxpayer in connection with a ruling or a determination letter. Any authorized representative, whether or not enrolled to practice, must also comply with the conference and practice requirements of the Statement of Procedural Rules (26 CFR 601). Form 2848, Power of Attorney, and Form 2848-D. Authorization and Declaration, may be used with regard to rulings, closing agreements, and determination letters requested under this revenue procedure.

.11 If a taxpayer has more than one representative, it is sufficient to send a copy of the ruling to any one of them. Copies of a ruling will be sent to no more than two representatives, provided that they are located at different mailing addresses. If a taxpayer does not designate which representative is to receive a copy of the ruling, a copy of the ruling will be sent to the first representative named on the latest power of attorney. If the original of the ruling is to be sent to a representative, the power of attorney should contain a statement to that effect and designate the mailing address of the representative.

.12 A request for a ruling letter by the National Office should be sent to the Internal Revenue Service, Associate Chief Counsel (Technical), Attention CC:IND:S:3, Room 6545, 1111 Constitution Avenue, N.W., Washington, DC 20224. A request for a determination letter should be sent to the District Director of Internal Revenue whose office has or will have examination jurisdiction over the taxpayer's return.

.13 If a request for a ruling or determination letter does not comply with all the provisions of this revenue procedure, the request will be acknowledged, and the requirements that have not been met will be pointed out. If a request for a ruling lacks essential information, the taxpayer will be told that if the information is not received within 30 calendar days, the request will be closed. If the information is received

after the request is closed, it will be reopened and treated as a new request as of the date the essential information is received. A request for a ruling letter sent to the District Director that does not comply with the provisions of this revenue procedure will be returned by the District Director for corrections before it is sent directly to the National Office.

14. A taxpayer who wants to have a conference on the issue or issues involved should indicate this in writing when, or soon after, filing the request.

.15 The Service processes requests for ruling and determination letters in regular order and as expeditiously as possible. Consideration of a request for processing ahead of its regular order, or by a specified time, delays the processing of other matters. Requests for processing ahead of the regular order must be made in writing, preferably in a separate letter sent with, or soon after, the request. If the request is not made in a separate letter, then the letter in which the request is made should say, at the top of the first page: "Expeditious Handling Is Requested. See page of this letter." The request should give a compelling need for such treatment. The Service cannot give assurance that any letter will be processed by the time requested. For example, the scheduling of a closing date for a transaction or a meeting of the board of directors or shareholders of a corporation, without regard for the time it may take to obtain a ruling or determination letter, will not be considered sufficient reason for handling a request ahead of its regular order. Nor will the possible effect of fluctuation in the market price of stocks on a transaction be considered sufficient reason for handling a request out of order. Requests by telegram will be treated in the same manner as requests by letter. Ruling and determination letters ordinarily are not issued by telegram. A request for expeditious handling will not cause the Communications and Records Group to route the case to the Ruling. Branch ahead of normal processing; and a request for expeditious handling will not be considered until the underlying ruling request has been found to satisfy the section 6110 requirements.

.16 The Director, Individual Tax Division, has primary responsibility for providing basic principles for uniform interpretation and application of the federal tax laws in those areas involving: income taxes of noncorporate taxpayers (including individuals, partnerships, estates, and trusts political organizations under section 527 (except subsection (f)); employment taxes and taxes on self-employment income; estate, gift, generation-skipping transfer, and certain excise taxes; and procedure and administration provisions of the Internal Revenue Code, except those that apply specifically to employee plans, exempt organizations, and actuarial determinations.

.17 The Director, Corporation Tax Division, has primary responsibility for providing basic principles of and rules for uniform interpretation and application of the federal tax laws in those areas involving: income taxes and earnings and profits of corporate taxpayers; changes in methods and periods of accounting, depreciation, depletion, valuation and other engineering issues; the taxable status of exchanges and distributions in connection with corporate organizations, reorganizations, and liquidations; and the exemption of farmers' cooperatives (under section 521), shipowners' protection and indemnity associations (under section 526), and certain homeowners associations (under section 528).

.18 A taxpayer may obtain information regarding the status of a request by calling the person whose name and telephone number is shown on the acknowledgement of receipt of the request.

.19 If, after receiving the notice under section 6110(f)(l) of the Code of intention to disclose the ruling or determination letter (including a copy of the version proposed to be open to public inspection and notation of third-party communications under section 6110(d)), the person requesting the ruling or determination letter wants to protest the disclosure of certain information in the ruling or determination letter, that person must within 20 calendar days send a written statement to the Internal Revenue Service office indicated on the notice of intention to disclose, identifying those deletions that the Service has not made and that the person requesting the ruling or determination letter believes should have been made. That person must also submit a copy of the version of the ruling or determination letter proposed to be open to public inspection on which the person indicates, by use of brackets, the deletions proposed by the taxpayer that have not been made by the Service. Generally, the Service will not consider the deletion under this subparagraph of any material that the taxpayer did not propose to be deleted before the ruling or determination letter was issued. Within 20 days after it receives the response to the notice under section 6110(f)(1), the Service will mail to that person its final administrative conclusion regarding the deletions to be made. The taxpayer does not have the right to a conference to resolve any disagreements concerning material to be deleted from the text of the ruling. However, these matters may be taken up at any conference that is otherwise scheduled regarding the request.

.20 After receiving the notice under section 6110(f)(1) of the Code of intention to disclose (but not later than 60 calendar days after the notice is mailed), the person requesting a ruling or determination letter may send a request for delay of public inspection under either section 6110(g)(3) or section 6110(g)(3) and (4). The request for delay must be sent to the Internal Revenue Service office indicated on the notice of intention to disclose. A request for delay must contain the date on which it is expected that the underlying transaction will be completed. The request for delay under section 6110(g)(4) must contain a statement from which the Commissioner may determine that there are good reasons for the delay.

.21 A taxpayer who receives a ruling or determination letter before filing a return about any transaction that has been consummated and that is relevant to the return being filed should attach a copy of the ruling or determination letter to the return when it is filed.

.22 Protests to adverse rulings under section 367 will be processed as follows:

Under Rev. Proc. 77-5, 1977-1 C.B. 536, a taxpayer may protest an adverse, or terms and conditions, ruling letter issued on or after January 31, 1977 under section 367(a)(1) of the Code. This protest procedure applies only to transactions consummated prior to 1985 or described in a request for ruling filed before March 1, 1984. Un-

der Rev. Proc. 77-5 the protest may not be made later than the close of the 45th calendar day after the date of the ruling letter. A protest is considered made on the date of the postmark of a letter of protest sent to the Associate Chief Counsel (Technical), or the date that the letter is hand delivered to the Service. The letter must include: (1) a copy of the ruling letter; (2) the reasons for the protest including, if applicable, (a) the grounds for asserting that none of the principal purposes for the exchange is the avoidance of federal income tax, (b) the grounds for asserting that the terms and conditions in the ruling letter pursuant to which an exchange to which section 367 applies will be considered not to be in pursuance of tax avoidance are not reasonable, and (c) the arguments supporting a protest of the validity of a ruling position published by the Service, such as a position in the guidelines announced in Rev. Proc. 68-23, 1968-1 C.B. 821 (factual material not previously submitted and considered by the Service should not be included in the protest); (3) a statement of whether a conference is desired; and (4) names of persons (including authorized representatives) expected to attend the conference, if a conference is granted. The Associate Chief Counsel (Technical) will establish an ad hoc advisory board to consider each protest, whether or not a conference is requested. The taxpayer will be granted one conference upon request. Whether or not such a request is made, the board may ask for one or more conferences or for written submissions. The taxpayer will be notified of the time, date, and place of the conference, and of the names of the members of the board. The board will consider all materials submitted in writing by the taxpayer and oral arguments presented at the conference. The board will make its recommendation to the Associate Chief Counsel (Technical) who will make a decision in the matter. Any oral arguments made at a conference by the taxpayer, which have not previously been submitted to the Service in writing, may, if desired, be submitted to the Service in writing if postmarked no later than the end of the 7th calendar day after the day of the conference. The taxpayer will be informed of the decision of the Associate Chief Counsel (Technical) by certified or registered mail.

.23 For appeal procedures with regard to adverse determination letters under section 521 of the Code and revocation or modification of exemption rulings and determination letters under section 521, see Rev. Proc. 84-46, 1984-1 C.B. 541.

SEC. 10. HANDLING OF RULING REQUESTS

.01 Within 21 calendar days after a ruling request is received in the branch, Service personnel will contact the taxpayers to discuss informally the procedural and substantive issues in the ruling request.

.02 The following subject matters are included in the 21 calendar day procedure:

1 Individual Income Tax Branch

(a) Partnerships and trusts

(b) Real estate investment trusts

(c) Stock options

(d) Employment and self-employment taxes (except ruling requests from individuals for employment status submitted on Forms SS-8)

(e) Credit for employment of certain new employees

(f) Rental value of parsonages

2 All matters within the jurisdiction of the Corporation Tax Branch, except cases

(a) involving a request for change in accounting methods or periods, generally governed by Rev. Proc. 84-74, 1984-2 C.B. 736,

(b) relating to the last-in, first-out method of computing inventory,

(c) concerning insurance issues on contracts with reserves based on segregated asset accounts,

(d) concerning insurance issues requiring actuarial computations.

3 All matters within the jurisdiction of the Specialty Tax Branch.

4 All matters within the jurisdiction of the Engineering Branch (except cases involving a request for a change in accounting methods), and the Reorganization Branch.

.03 Procedures to be followed regarding ruling requests are:

1 Within 21 calendar days after a ruling request has been received in the branch having jurisdiction, a representative of the branch will contact the taxpayer to discuss the procedural issues in the ruling requests covered by this procedure. Considering the complexity of some cases or the number of issues involved, it may not be possible for the branch representative to discuss the substantive issues in the ruling request during this initial contact. However, when possible, as to each issue coming within the jurisdiction of the branch, the branch representative will tell the taxpayer:

(a) whether the branch representative will recommend the Service rule as the taxpayer requested, rule adversely on the matter, or not rule;

(b) whether the taxpayer should submit additional information or representations to enable the Service to rule on the matter; or

(c) whether because of the nature of the transaction, or the issue presented, a tentative conclusion on the issue cannot be reached.

2 When the rulings requested involve matters within the jurisdiction of more than one branch or more than one office in the same branch, a representative of the branch that received the original ruling request will tell the taxpayer within the initial 21 calendar day contact period: (1) that the rulings requested involving matters within the jurisdiction of another branch or another office in the same branch have been referred to the other branch or office for consideration; and (2) that a representative of the other branch or office will contact the taxpayer within 21 calendar days after receiving the referral to informally discuss the procedural and, to the extent possible, the substantive issues if covered by this procedure.

3 If something less than a fully favorable ruling is indicated, the branch representative will tell the taxpayer if minor modifications of the transaction or adherence to certain published positions will warrant the issuance of a favorable ruling. In addition, the branch representative may tell the taxpayer what representations must be furnished in a document to comply with the requirements of the Service. However, the branch representative will not suggest precise changes that would materially alter the form of the proposed transaction. If, at the conclusion of the discussion, the branch representative determines that a meeting in the National Office would better serve the purpose of developing or exchanging information, a meeting will be offered and an early meeting date arranged. This meeting will not be the taxpayer's conference of right, as described in this revenue procedure.

4 The Service will not be bound by the informal opinion expressed by the branch representative or any other authorized Service representative under this procedure, and such an opinion cannot be relied upon as a basis for granting retroactive relief under the provisions of section 7805(b) of the Code.

5 The ruling request will then be processed under present procedures.

SEC. 11. CONFERENCES IN THE NATIONAL OFFICE

.01 A taxpayer may request a conference only in connection with a ruling request. Normally, a conference is scheduled only when the National Office considers it to be helpful in deciding the case or when an adverse decision is indicated. If conferences are being arranged for more than one request for a ruling involving the same taxpayer, they will be scheduled so as to cause the least inconvenience to the taxpayer. If a conference has been requested, the taxpayer will be notified by telephone, if possible, of the time and place of the conference. The conference must be held within 21 calendar days after such contact has been made. Procedures for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's decision are the same as those stated in section 9.05.

.02 A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in section 11.06 develops. This conference normally will be held at the branch level of the appropriate division in the office of the Associate Chief Counsel (Technical) and will be attended by a person who, at the time of the conference, has authority to sign the ruling letter for the branch chief in the case being discussed. When more than one branch has taken an adverse position of an issue within its jurisdiction presented in a ruling request, or when the position ultimately adopted by one branch will affect another branch's determination, a representative from each branch with the authority to sign for the branch chief will attend the conference. If more than one subject is to be discussed at the conference, the discussion will constitute a conference on each subject. In order to promote a free and open discussion of the issues, the conference usually will be held after the branch has had an opportunity to study the case. However, at the request of the taxpayer or representative, the conference of right may be held at an earlier stage in the consideration of the case than the Service ordinarily would designate. No taxpayer has a "right" to appeal the action of a branch to a division director or to any other official of the Service.

.03 In employment tax matters, only the party entitled to the ruling is entitled to a conference.

.04 Since conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference will be made.

.05 The senior Service representative present at the conference insures that the taxpayer has full opportunity to present views on all of the issues that are in question. The Service representative explains the Service's tentative decision on the substantative issues and the reason for that decision. If the taxpayer advances prospective application under section 7805(b) of the Code, the Service, representative will discuss the tentative recommendation concerning the request for relief and the reason for the tentative recommendation. No commitment will be made as to the conclusion that the Service will finally adopt.

.06 An invitation to an additional conference will be extended if, after the conference of right, an adverse holding is proposed but on a new issue or on the same issue but on different grounds from those discussed at the first conference. There is no right to another conference when a proposed holding is reversed at a higher level with a result less favorable to the taxpayer if the ground or arguments on which the reversal is based were discussed at the conference of right. The provision of this revenue procedure limiting the number of conferences to which a taxpayer is entitled will not prevent a taxpayer from attending further conferences when, in the opinion of National Office personnel, such conferences are necessary. All additional conferences of the type discussed in this paragraph are held only at the invitation of the Service.

.07 It is the responsibility of the taxpayer to furnish in writing to the National Office any additional data, lines of reasoning, precedents, etc. that are proposed by the taxpayer and discussed at the conference but that were not previously or adequately presented in writing. The taxpayer must furnish the additional information within 21 calendar days. If the additional information is not received within that time, a ruling will be issued on the basis of the information on hand or, if appropriate, no ruling will be issued. Procedures for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's decision are the same as those stated in section 9.05.

SEC. 12. DISTRICT OFFICE REFERRAL OF MATTERS TO THE NATIONAL OFFICE

.01 Request for determination letters received by District Directors that, under the provisions of this revenue procedure, may not be acted upon by a District Office, will be forwarded to the National Office for reply. The District Office will let the taxpayer know that this action has been taken. District Directors will also refer to the National Office any request for a determination letter that in their judgment should have the attention of the National Office.

.02 If the request involves an issue on which the Service will not issue a ruling or determination letter, the request will not be forwarded tot the National Office. The District Office will let the taxpayer know that the Service will not issue a ruling or a determination letter on the issue. See section 8.01 of this revenue procedure.

SEC. 13. REFERRAL OF MATTERS TO DISTRICT OFFICES

Requests for rulings received by the National Office that, under section 5 of this revenue procedure, may not be acted upon by the National Office will be forwarded to the District Office that has examination jurisdiction over the taxpayer's return. The taxpayer will be notified of this action. If the request is on an issue or in an area of the type discussed in section 8.01 and it is decided not to issue a ruling or an information letter, the National Office will let the taxpayer know and the request will then be forwarded to the appropriate District Office for association with the related return.

SEC. 14. REVIEW OF DETERMINATION LETTERS

Determination letters issued under sections 7.01, 7.02, 7.03 and 7.04 are not reviewed by the National Office before they are issued. If a taxpayer believes that a determination letter of this type is in error the taxpayer may ask the District Director to reconsider the matter. The taxpayer may also ask the District Director to request technical advice from the National Office. In such an event the procedures in Rev. Proc. 86-2 must be followed.

SEC. 15. WITHDRAWAL OF REQUESTS

A request for a ruling or determination letter may be withdrawn at any time before the signing of the letter of reply. If a request for a ruling is withdrawn, the National Office may give its views on the subject matter of the request to the District Director whose office will have examination jurisdiction over the taxpayer's return for consideration in connection with any later examination of the taxpayer's return. Even though a request is withdrawn, all correspondence and exhibits will be kept by the Service and will not be returned to the taxpayer. In appropriate cases, the Service may publish its findings in a revenue ruling or revenue procedure.

SEC. 16. ORAL ADVICE TO TAXPAYERS

.01 The Service does not issue rulings or determination letters on oral requests. However, personnel in the rulings divisions ordinarily will discuss with taxpayers or their representatives inquiries regarding: substantive tax issues; whether the Service will rule on particular issues; and questions relating to procedural matters about submitting ruling requests (including the application of section 9, of this revenue procedure, to a particular case). Any discussion of substantive issues will be at the discretion of the Service on a time-available basis, and will not be binding on the Service.

.02 A taxpayer may seek oral technical assistance from a Taxpayer Service Representative in a District Office or Service Center when preparing a return or report, under other established procedures. Oral advice is advisory only and the Service is not bound to recognize it in the examination of the taxpayer's return.

SEC. 17. EFFECT OF RULINGS

.01 A taxpayer may not rely on a ruling issued to another taxpayer. A ruling, except to the extent incorporated in a closing agreement, may be revoked or modified at any time under appropriate circumstances. See section 4.08 for the effect of a closing agreement. If a ruling is revoked or modified, the revocation or modification applies to all years open under the statutes, unless the Commissioner or the Commissioner's delegate exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the revocation or modification. The manner in which the authority generally is exercised is given later in this section. For information on rulings relating to the sale or lease of articles subject to the manufacturer's excise tax and the retailer's excise tax, see section 17.08.

.02 When determining a taxpayer's liability, the District Director must ascertain whether (1) any ruling previously issued to the taxpayer has been properly applied, (2) the representations upon which the ruling was based reflected an accurate statement of the material facts, and (3) the transaction actually was carried out substantially as proposed. If, in the course of determining the tax liability, the District director finds that a ruling should be modified or revoked, the findings and recommendations of the District Director will be forwarded to the National Office for consideration before further action. Such a referral to the National Office will be treated as a request for technical advice and the procedures of Rev. Proc. 86-2 will be followed. Otherwise the ruling is to be applied by the District Office in its determination of the taxpayer's liability.

.03 Appropriate coordination with the National Office will be undertaken if any field official having jurisdiction over a return or other matter proposes to reach a conclusion contrary to a ruling previously issued to the taxpayer.

.04 A ruling found to be in error or not in accord with the current views of the Service may be modified or revoked. Modification or revocation of a ruling may be made by (1) a notice to the taxpayer to whom the ruling was issued, (2) an enactment of legislation or ratification of a tax treaty, (3) a decision of the United States Supreme Court, (4) the issuing of temporary or final regulations, or (5) the issuing of a revenue ruling, a revenue procedure, or other statement published in the Internal Revenue Bulletin. Consistent with these provisions, if a ruling relates to a continuing action or a series of actions, the ruling will ordinarily be applied until any one of the actions described above has taken place, or until specifically withdrawn. Publication of a notice of proposed rulemaking will not affect the application of any ruling issued under the procedures stated in this revenue procedure.

.05 Except in rare or unusual circumstances, the revocation or modification of a ruling will not be applied retroactively to the taxpayer for whom the ruling was issued or to a taxpayer whose tax liability was directly involved in the ruling if (1) there has been no misstatement or omission of material facts, (2) the facts developed later are not materially different from the facts on which the ruling was based, (3) there has been no change in the applicable law, (4) the ruling was originally issued with respect to a prospective or proposed transaction, and (5) the taxpayer directly involved in the ruling acted in good faith in reliance upon the ruling and the retroactive revocation would be to the taxpayer's detriment. For example, the tax liability of each shareholder is directly involved in a ruling on the reorganization of a corporation. However, the tax liability of members of an industry is not directly involved in a ruling issued to one of the members, and the holding in a revocation or modification of a ruling to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive application to one client of a modification or revocation of a ruling previously issued to another client. If a ruling is revoked by letter with retroactive effect, the letter will, except in fraud cases, state the grounds upon which the revocation is being made and the reasons why the revocation is being applied retroactively.

.06 A ruling issued on a particular transaction represents a holding of the Service on that transaction only. How-

ever, the application of that ruling to the transaction will not be affected by the later issuing of regulations (either temporary or final), if the conditions specified in section 17.05 are met. If the ruling is later found to be in error or no longer in accord with the position of the Service, it will not give the taxpayer protection for a like transaction in the same year or later year.

.07 However, if a ruling is issued covering a continuing action or a series of actions and it is determined that the ruling was in error, or no longer in accord with the position of the Service, the Associate Chief Counsel (Technical) ordinarily will limit the retroactivity of the revocation or modification to a date that is not earlier than that on which the ruling is modified or revoked. To illustrate, if a taxpayer receives a ruling that certain payments are excludable from gross income for federal income tax purposes and it is later determined that the ruling is in error or no longer in accord with the position of the Service, the Associate Chief Counsel (Technical) ordinarily will restrict the retroactive application of the revocation or modification of the ruling. If a taxpayer rendered service or provided a facility that is subject to the excise tax on services or facilities, and in reliance on a ruling issued to the same taxpayer did not pass the tax on to the user of the service of the facility, the Associate Chief Counsel (Technical) ordinarily will restrict the retroactive application of the revocation or modification of the ruling. If an employer incurred liability under the Federal Insurance Contributions Act, but in reliance on a ruling made to the same employer, neither collected the employee tax nor paid the employee and employer taxes under the Act, the Associate Chief Counsel (Technical) ordinarily will restrict the retroactive application of the revocation or modification of the ruling for both the employer tax and the employee tax. In the last situation, however, the restriction of retroactive application ordinarily will be conditioned on the furnishing by the employer of wage data, as may be required by section 31.6011(a)-1 of the Employment Tax Regulations.

.08 A ruling holding that the sale or lease of a particular article is subject to the manufacturer's excise tax or the retailer's excise tax may not retroactively revoke or modify an earlier ruling holding that the sale or lease of such an article was not taxable, if the taxpayer to whom the ruling was issued, in reliance upon the earlier ruling, parted with possession or ownership of the article without passing the tax on to the customer. Section 1108(b), Revenue Act of 1926.

.09 For rulings involving completed transactions, other than those described in sections 17.07 and 17.08, taxpayers will not be given the protection against retroactive revocation provided in section 17.05, since they will not have entered into the transactions in reliance on the ruling.

SEC. 18. EFFECT OF DETERMINATION LETTERS

A determination letter issued by a District Director has the same effect as a ruling issued to a taxpayer under section 17 of this revenue procedure. However, if the District Director is of the opinion that a conclusion contrary to that expressed in the determination letter is indicated, the matter need not be referred to the National Office. A District Director may not limit the modification or revocation of a determination letter but may refer the matter to the National Office for the possible exercise by the Commissioner of the Commissioner's delegate of the authority to limit the modification or revocation.

SEC. 19. EFFECT OF INFORMATION LETTERS

An information letter issued by the National Office or by a District Director is advisory only and the provisions of section 17 do not apply.

SEC. 20. PROCEDURE FOR REQUESTING APPLICATION OF SECTION 7805(b) IN THE CASE OF RULINGS AND DETERMINATION LETTERS

.01 Pursuant to section 7805(b) of the Code, it is within the discretion of the Commissioner or the Commissioner's delegate to prescribe the extent, if any, to which any ruling (including termination letters) will be applied without retroactive effect.

A taxpayer to whom a ruling or determination letter has been issued may request that the Associate Chief Counsel (Technical), the Commissioner's delegate, exercise the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of any subsequent revocation or modification of the ruling or determination letter.

.02 In the case of a ruling, a request to limit the retroactive effect of the revocation or modification of a ruling must be in the form of, and meet the requirements for, a ruling request generally. These requirements are set forth in section 9 of this revenue procedure. Specifically, the request must state that it is being made pursuant to section 7805(b), contain a statement of the relief sought and an explanation of the reasons and arguments in support of the relief requested, and also be accompanied by any documents bearing on the request. The explanation in support of the application of section 7805(b) should include a discussion of the five items enumerated in section 17.05 of this revenue procedure as they relate to the taxpayer's particular situation.

A request for the application of section 7805(b) of the Code may take the form of a separate request for ruling when, for example, a revenue ruling has the effect of modifying or revoking a ruling previously issued to the taxpayer or when the Service notifies the taxpayer of a change in position that will have the effect of revoking or modifying such a ruling. However, when such notice is given by the District Director during the course of an examination of the taxpayer's return, or during consideration by the Chief, Appeals Office, a request to limit the retroactive effect of the modification or revocation of a ruling must be made in the form of a request for technical advice. See section 12.03 of Rev. Proc. 86-2. When germane to a pending ruling request, a request for the application of section 7805(b) may be made as part of the request, either initially or at any time before the ruling is issued. When a ruling that concerns a continuing transaction is modified or revoked by, for example, a subsequent revenue ruling, a request to limit the retroactive effect of the modification or revocation of the ruling must be made before the return is examined that contains the transaction that is the subject of the request for ruling.

.03 When a request for the application of section 7805(b) of the Code is

made in a separate ruling request, the taxpayer has the right to a conference in the National Office in accordance with the provisions of section 11 of this revenue procedure. If the request is made initially as part of a pending ruling request or is made before the conference of right is held on the substantive issues, the section 7805(b) issue will be discussed at the taxpayer's one conference of right. (See section 11.05 of this revenue procedure). If the request for the application of section 7805(b) is made as part of a pending ruling request after a conference has been held on the substantive issue, and the Service determines that there is justification for having delayed the request, then the taxpayer will have the right to one conference of right concerning the application of section 7805(b) with the conference limited to discussion of this issue.

.04 In the case of a determination letter that the District Director proposes to modify or revoke, a request to limit the modification or revocation of the determination letter must be made by requesting the District Director who issued the determination letter to seek technical advice from the National Office, since a District Director has not been delegated authority under section 7805(b) of the Code to limit the modification or revocation of a determination letter. See section 12.03 of Rev. Proc. 85-2. The Taxpayer's request must state that it is being made pursuant to section 7805(b), contain a statement of the relief sought and an explanation of the reasons and arguments in support of the relief requested, and also be accompanied by any documents bearing on the request. The explanation in support of the application of section 7805(b) should include a discussion of the five items enumerated in section 17.05 of this revenue procedure as they relate to the taxpayer's particular situation.

.05 When technical advice is requested with respect to the application of section 7805(b) of the Code under the circumstances set forth in .04 above, the taxpayer has a right to a conference in the National Office to the same extent as does any taxpayer who is the subject of a technical advice request. See section 8 of Rev. Proc. 86-2.

SEC. 21. EFFECT OF OTHER DOCUMENTS

Rev. Proc. 85-1, as modified by Rev. Proc. 85-50 and as amplified by Rev. Proc. 85-57, is superseded.

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